

**IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
BRYSON CITY DIVISION  
2:07cr34**

<b>UNITED STATES OF AMERICA,</b>	)	
	)	
<b>Vs.</b>	)	<b>ORDER</b>
	)	
<b>LARRY JAMES MILLER,</b>	)	
	)	
<b>Defendant.</b>	)	
_____	)	

THIS CAUSE came on to be heard before the undersigned on March 20, 2008 for the purpose of conducting a proceeding pursuant to Rule 11 of the Federal Rules of Criminal Procedure. The undersigned was advised that the defendant had executed a plea agreement and that the undersigned should conduct a proceeding to determine whether or not to accept the plea of guilty of the defendant. At the Rule 11 proceeding, the defendant appeared with counsel and the Government appeared through the Assistant United States Attorney. At the beginning of the proceeding, counsel for the defendant advised the court that during the period of time from the return of the defendant from a mental capacity evaluation to the date of the Rule 11 proceeding on March 20, 2008, the defendant had not been receiving medications for the treatment of his psychological disabilities. The undersigned attempted to conduct the Rule 11 proceeding but discovered that the defendant was not able to understand the inquiry that was being made by the court. The undersigned then determined not

to accept the plea of guilty of the defendant and to perform a further investigation to determine if the defendant was being given his medications and if not, the reason why and to ensure that such medications should now be given to the defendant in the amounts as prescribed so that further proceedings could be conducted.

The undersigned has determined from an examination of the sealed documents, including the information contained in a report dated January 3, 2008, that being the report of the examination of the defendant, that it was the recommendation of Elissa R. Miller, acting Chief Psychologist, and William J. Ryan, Forensic Psychologist of the United States Department of Justice, Federal Bureau of Prisons, Metropolitan Correctional Center of New York, New York, that “it is strongly recommended that Mr. Miller continue to receive psychotropic medication management of his mood symptoms”. The undersigned will now attempt to make inquiry to determine: 1) If the defendant has been receiving or not receiving the medications as recommended; 2) If the defendant has not been receiving his medications, the reason why such medications were not administered; 3) The name of the person or entity who is responsible for administering such medications to the defendant during his period of detention and should it be found the defendant has not been receiving his medications the reasons for such; and 4) An examination of the records of medications provided to the defendant at the detention facility.

Based upon the foregoing, the undersigned has determined to enter an order scheduling this matter for further hearings on April 4, 2008 at 9:30 o'clock a.m. in Courtroom #2 in the United States Courthouse in Asheville, North Carolina. The purpose of this hearing will be to determine the answer to the above stated questions and for the purpose of conducting an examination of the records of the detention facility concerning the administration of medications to the defendant. The defendant and his counsel are required to be present and a copy of this Order is required to be served by the United States Marshal upon the administrator of the facility where the defendant is being detained and such administrator is required to be present for this hearing and to bring with he or she the records of the detention facility where the defendant has been detained since he has been returned from his examination and including therewith the records concerning administration of medications to the defendant.

### **ORDER**

IT IS, THEREFORE, **ORDERED** as follows:

1. That the court, at this time, declines to accept the plea of guilty of the defendant.
2. That a hearing be set for Friday, April 4, 2008 at 9:30 o'clock a.m. and

it is **ORDERED** that the following persons be present:

- a) The defendant's attorney;
- b) The defendant;
- c) The Assistant United States Attorney; and
- d) The administrator of the facility where the defendant is being detained.

3. At the hearing, the court shall make inquiry as to the following issues:

A) If the defendant has been receiving or not receiving the medications as recommended;

B) If the defendant has not been receiving his medications, the reason why such medications were not administered;

C) The name of the person or entity who is responsible for administering such medications to the defendant during his period of detention and if the defendant has not be receiving his medications, the reasons for such; and

D) An examination of the records of medications provided to the defendant at the detention facility.

4. The administrator of the facility where the defendant has been detained since he has been returned from his examination is required by this order to bring to

the hearing the records of the detention facility concerning the detention of the defendant, including the records that will show what medications have been administered to the defendant since he has been placed at the detention facility.

Signed: March 27, 2008

Dennis L. Howell

Dennis L. Howell  
United States Magistrate Judge

